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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,979	04/05/2001	Jeffrey D. Flood	2695.01US02	4125

24113 7590 05/16/2003

PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
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80 SOUTH 8TH STREET
MINNEAPOLIS, MN 55402-2100

EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/826,979

Applicant(s)

FLOOD ET AL.

Examiner

David L. Sorkin

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 and 38-45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-37 and 46-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-55 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.5. 6) ☐ Other: _____

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Interview Summary

Application No.

09/826,979

Applicant(s)

FLOOD ET AL.

Examiner

David L. Sorkin

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All participants (applicant, applicant's representative, PTO personnel):

(1) David L. Sorkin.

(3) _____.

(2) Micheal A. Bondi.

(4) _____.

Date of Interview: 08 May 2003.

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.
If Yes, brief description: _____.

Claim(s) discussed: N/A.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Examiner Sorkin called Mr. Bondi because the case file indicated that an Office Action was mailed 04 November 2002, and that no response had been received. However, the cover sheet of the Office Action in the USPTO file had the wrong mailing address, application number, inventor, examiner, etc. Mr. Bondi confirmed that no corresponding Office Action was received. Examiner Sorkin told Mr. Bondi that the Office Action would be remailed. Subsequent to the interview, someone removed said cover sheet from the file, and replaced it with a cover sheet with accurate bibliographic information, but apparent falsely stating that the Office Action was mailed 13 November 2002 .

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

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Remailing of Office Action

1. Enclosed is a copy of an Office Action originally mailed to a wrong address on 04 November, 2002. An interview summary further explaining the situation is also enclosed.
2. A shortened statutory period for reply to this remailing is set to expire 3 months from the date of this communication.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

May 15, 2003

DETAILED ACTION

Election/Restrictions

1. Applicant states "the Examiner indicated that claims 28-45 were classified in 6 different groups"; however, this statement is not accurate. Instead, the examiner indicated claims 1-45 were directed to four (4) distinct groups (Group I, claims 1-27; Group II, claims 28-37; Group III, claims 38-41 and Group IV claims 42-45). Applicant further states that "it is elected to pursue prosecution of group 4 that included claims 28-37". The examiner interprets this statement as indicating that Group II, claims 28-37, are elected. The examiner considers that the election has been made without traverse, because no supposed errors in the requirement have been discussed by applicant.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 28-33, 35-37, 46-51 and 53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by McCleary et al. (US 3,49,620). Regarding claim 28, McCleary ('620) discloses a slurry mixer comprising a substantially cylindrical side wall (24) with a lower end and an upper end; a base wall enclosing the lower end of the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a first stirring apparatus fixedly mounted in the mixing region, wherein the first stirring apparatus has first mixing elements (18a,21) attached thereto; and a second stirring

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apparatus (17) rotatably mounted in the mixing region, wherein the second stirring apparatus has second mixing elements (18,19a,22) attached thereto, wherein the first mixing elements and the second mixing elements engage each other as the second stirring apparatus is rotated to remove slurry therefrom, and wherein the second mixing elements engage a the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9).

Regarding claim 29, the first stirring apparatus includes an upper member (10c) and a plurality of upper mixing members (18a,21) that extend from the upper member.

Regarding claim 30, the second stirring apparatus has a lower member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower member.

Regarding claim 31, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 32, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 33, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 35, further comprising a top wall (10c) enclosing the upper end of the side wall. Regarding claim 36, the top wall has three ports (11,12,13). Regarding claim 37, a dust collection apparatus (hopper 11) operably connected to the slurry mixer. Regarding claim 46, McCleary ('620) discloses a slurry mixer comprising a side wall (24) with a lower end and an upper end; a base wall enclosing the lower end of

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the side wall and defining a mixing region in which the slurry is prepared (see Figs. 1 and 6); a first stirring apparatus fixedly mounted in the mixing region, wherein the first stirring apparatus has first mixing elements (18a,21) attached thereto; and a second stirring apparatus (17) rotatably mounted in the mixing region, wherein the second stirring apparatus has second mixing elements (18,19a,22) attached thereto, wherein the first mixing elements and the second mixing elements engage each other as the second stirring apparatus is rotated to remove slurry therefrom, and wherein the second mixing elements engage a the side wall as the second stirring apparatus is rotated to remove slurry from the side wall (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 47, the first stirring apparatus includes an upper member (10c) and a plurality of upper mixing members (18a,21) that extend from the upper member. Regarding claim 48, the second stirring apparatus has a lower member (17) and a plurality of lower mixing members (18,19a,22) that extend from the lower member. Regarding claim 49, the upper mixing members are offset from the lower mixing members so that the upper mixing members pass between the lower mixing members as the second stirring apparatus is rotated (see Fig. 1). Regarding claim 50, the upper mixing members and the lower mixing members engage each other as they move past each other to remove slurry therefrom (see Fig. 1, col. 2, lines 53-57; col. 3 line 50 to col. 4, line 9). Regarding claim 51, the mixer further comprises a dispensing auger (30) positioned in the mixing region proximate the base wall for dispensing slurry from the mixing region. Regarding claim 53, further comprising a top wall (10c) enclosing the upper end of the side wall. Regarding claim 54, the top wall has three ports (11,12,13).

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Regarding claim 55, a dust collection apparatus (hopper 11) operably connected to the slurry mixer.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 34 and 52 rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary et al. (US 3,49,620). In the apparatus of McCleary ('620) discussed above, it is not explicitly stated that a "motor" rotates the second stirring apparatus. However, col. 3, line 51 ("rotatably driven by shaft 16") and col. 4, line 12 ("mixer speed of 300 [rpm]") would have strongly suggested a motor to one of ordinary skill in the art.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

October 31, 2002



CHARLES E. COOLEY
PRIMARY EXAMINER